IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3856 OF 2005

Prakash C.Bhagade & Ors. ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr.Rajendra Shirodkar for the Applicant
Mr.A.S.Gadkari,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 30,2005.

P.C.:

1. Heard Counsel appearing for the parties. This application for bail is filed by the original accused Nos.6,9,11,13,14,16,18,22,25 and 27. The offence alleged against the Applicant and co-accused is for offence punishable under Sections 147,148,149,341, 504 and 302 of the Indian Penal Code.

2. F.I.R. is filed by one Mulchand Baburao Bhagat, the brother of deceased Hiralal. The complainant is a labour Contractor in Astral Glass Company. Hiralal was employed in Railways. The complainant was returning home from the Glass Company on his motor cycle at about 7.00 p.m. on 28th October 2004. At that time Hiralal was going towards home by his bicycle. The allegation is that 28 persons including the Applicants came together and they were having swords, sticks etc. in their hands. They stopped his bicycle and questioned the said Hiralal as to why his brother was not employing their persons in the Glass company. The allegation is that the said

persons caught hold of Hiralal and started assaulting him by fist blows and kicks. A specific allegation is that one Nandlal assaulted the victim on his head by a sword. Same is the allegation made against Vyankatesh. The allegation against two other accused Suresh and Janardan is that they lifted two big stones lying there and crushed the head of Hiralal by the stones. None of these accused are the Applicants.

3. In a statement of one Devidas who is allegedly an Eye Witness, he has named 29 persons who were allegedly present at the time of offence and who allegedly participated in the crime. However, specific allegations of assault are made by the said witness against Nandlal, Suresh, Janardan and Vyankatesh. The other witness Bharat Balkrishna Bhagade has specifically named twenty persons and specific allegations of assault are made only against the said Nandalal, Suresh and Janardan. Same is the case with the statements of other alleged Eye Witnesses.

4. The learned Counsel for the Applicant submitted that there was political rivalry between the two groups in the village. He submitted that there are no specific allegations made against the Applicants. He submitted that the cause of death of Hiralal is due to injury on the scalp.

5. The learned A.P.P. pointed out that by Judgment and Order

dated 15th April 2005 in criminal Application No.2392 of 2005 an application for bail made by some other Accused in the same offence has been rejected. He pointed out that by the said order two accused were enlarged on bail considering their tender age. The learned A.P.P. on instructions of the Investigating Officer who is stated to be present in the Court stated that when the said order was passed, the atmosphere in the village was very tense and now there is no subsisting tension in the village. He further stated that this is a change in circumstances from the situation which existed on 15th April 2005.

6. After having considered the submissions made by the learned Counsel for the parties, I find that there is no specific allegation made against the Applicants herein regarding assault on the deceased by using any specific weapon. A general allegation is made by all the witnesses against the members of mob consisting about 28 or more persons that they assaulted Hiralal by fist blows and kicks. The specific allegation regarding assault by using sword and stones is against four different accused who are not applicants in this Application.

7. Now it is stated that the tension in the village has disappeared. Some of the witnesses have stated about the political rivalry in two groups. Considering the fact that charge sheet is filed and considering that no specific role of

using weapons is ascribed to any of the Applicants, in my view a case is made out for enlarging the Applicants on bail.

8. It is to be noted here that even the statements of some of the witnesses disclosed that there was a political rivalry between the two groups. However, it will be necessary to impose stringent conditions on the Applicants by directing them not to enter the particular area to avoid any attempt to pressurise the witnesses.

9. Hence I pass the following order:

i) The Applicants shall be enlarged on bail in connection with C.R.No.98 of 2004 registered at Igatpuri Police Station on executing P.R.Bond in the sum of Rs.15,000/- (Rupees fifteen thousand) each with two local sureties in the like amount.

ii) Bail is granted subject to the condition that the Applicants shall not enter the area falling within the jurisdiction of Igatpuri Police Station till the conclusion of trial. However, in case of genuine difficulty, the Applicants will be at liberty to apply to the Trial Court for grant of permission to enter the said area.

iii) The Applicants shall not make any attempt directly or indirectly to influence or pressurise the prosecution witnesses in any manner and will not tamper with the

prosecution evidence.

iv) The Applicants shall be enlarged on bail only after they inform the concerned Officer of the jail their respective addresses of residence.

v) Bail is granted subject to the condition that the Applicants shall report to the nearest Police station on every first Saturday of every English calendar month between 10.00 a.m. to 2.00 p.m. till the conclusion of the trial.

vi) The Applicants will co-operate with the learned Trial Judge for expeditious disposal of the trial. Any default on the part of the Applicants to delay the trial may be a ground for cancellation of bail.

vii) Application is disposed of in above terms.

JUDGE